

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**DELWIN DAVIS, II**

**V.**

**FIRSTFLEET, INC.**

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§  
§  
§  
§

**CIVIL ACTION NO. 4:16-cv-1946**

**JURY REQUESTED**

**DEFENDANT'S NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant, FIRSTFLEET, INC., and hereby gives notice of its removal of Cause No. 2016-37282 filed in the 333<sup>rd</sup> Judicial District Court of Harris County, Texas, to the United States District Court for the Southern District of Texas pursuant to the provisions of 28 U.S.C. §§ 1441(a) and 1446.

**Factual Background**

1. On or about January 20, 2015, Plaintiff rear-ended a parked FirstFleet, Inc.'s tractor near the 16800 block of Sugar Pine Drive in Harris County, Texas. Plaintiff claims he was injured as a result of this collision and filed suit in state court.

2. Plaintiff filed suit in state court on June 3, 2016. Service of Citation and Petition was made on counsel for FirstFleet, Inc. on June 10, 2016. In Plaintiff's Petition there is a monetary claim for damages in an amount greater than \$1,000,000, which exceeds the jurisdictional minimum. The case has been on file for less than one year. Removal is both timely and appropriate.

**Basis for Removal and Jurisdiction**

3. This cause may be removed pursuant to 28 U.S.C. § 1441(a). "[A]ny civil action brought in State court of which the district courts of the United States have original jurisdiction,

may be removed by the defendant . . . , to the district court of the United States for the district and division embracing the place where such action is pending.” This Court has jurisdiction over this matter under 28 U.S.C. § 1332 because there is complete diversity of citizenship and the amount in controversy is greater than \$1,000,000.00.

### **Full Diversity Between the Parties**

#### ***Complete Diversity of Citizenship***

4. To have diversity of citizenship, each plaintiff must have a different citizenship from each defendant. 28 U.S.C. § 1332. Complete diversity of citizenship exists between the parties as the Plaintiff is a Texas citizen and Defendant is not a Texas corporation.

5. Plaintiff, Delwin Davis, II, is a resident and citizen of the State of Texas.

6. Defendant, FirstFleet, Inc. is incorporated in Tennessee and has its principal place of business in Murfreesboro, Tennessee.

#### ***Amount in Controversy***

8. In order for diversity jurisdiction to exist, the amount in controversy must exceed \$75,000.00, exclusive of interest and costs. 28 U.S.C. § 1332(a).

9. Plaintiff is seeking more than \$1,000,000.00 in damages, as stated in his Petition.

### **Removal is Timely and Appropriate**

10. If the plaintiff creates diversity jurisdiction sometime after filing the initial complaint, the defendant has one year from the commencement of the suit to remove. 28 U.S.C. § 1446(b). A defendant has 30 days to remove a civil action after receipt of the first pleading or other paper that establishes the jurisdictional grounds. 28 U.S.C. § 1446(b). When diversity is the basis for removal, the defendant can rely on the plaintiff's voluntary assertion of damages within the complaint to meet the monetary jurisdictional requirement for diversity. *S.W.S. Erectors, Inc. v.*

*Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996). "The burden of establishing subject matter jurisdiction in federal court rests on the party seeking to invoke it." *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998). Here, Plaintiff's Pleading voluntarily asserts an amount in controversy in excess of \$75,000.00. This removal is filed within the thirty (30) days of the service of Plaintiff's Petition. The removal is both timely and appropriate.

**Jury Demanded**

11. Defendant requests that the case be tried before a jury.

**Consent of Served Defendant**

12. Defendant FirstFleet, Inc. has been properly served and consents to this removal.

**Compliance with Local Rule and Notice Requirements**

14. Pursuant to 28 U.S.C. § 1446 and Local Rule 81, the following documents are attached to this Notice:

Exhibit A.....List of State Court Filings

Exhibit B.....Civil Process Request

Exhibit C.....Civil Case Information Sheet

Exhibit D.....Plaintiff's Original Petition and Requests for Disclosure

Exhibit E.....Return of Citation with affidavit

Defendant knows of no orders signed by the state judge.

15. Pursuant to 28 U.S.C. 1446(d), written notice of the filing of this instrument will be given to Plaintiff. A true and correct copy of this Notice of Removal will also be attached as an exhibit with the written Notice of Removal filed with the clerk of the state court.

Respectfully submitted,

/s/ Roger D. Oppenheim

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Roger D. Oppenheim

FBN: 14206

SBN: 15292400

OF COUNSEL:

**LORANCE & THOMPSON, P.C.**

2900 North Loop West, Suite 500

Houston, TX 77092

713/868-5560

713/864-4671 (fax)

[rdo@lorancethompson.com](mailto:rdo@lorancethompson.com)

ATTORNEY FOR DEFENDANT

FIRSTFLEET, INC.

**CERTIFICATE OF SERVICE**

On this 1<sup>st</sup> day of July, 2016, a true and correct copy of the foregoing instrument has been provided to all parties by e-filing and/or telefax transmission.

Mr. Jason Webster

**THE WEBSTER LAW FIRM**

6200 Savoy Drive, Ste. 150

Houston, TX 77036

[filing@thewebsterlawfirm.com](mailto:filing@thewebsterlawfirm.com)

/s/ Roger D. Oppenheim

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Roger D. Oppenheim

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**DELWIN DAVIS, II**

**V.**

**FIRSTFLEET, INC.**

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**CIVIL ACTION NO. 4:16-cv-1946**

**JURY REQUESTED**

**INDEX OF MATTERS BEING FILED**

Defendant, FIRSTFLEET, INC., in connection with the removal of this case to the United States District Court for the Southern District of Texas, Houston Division, files its index of matters, as follows:

Exhibit A.....List of State Court Filings

Exhibit B.....Civil Process Request

Exhibit C.....Civil Case Information Sheet

Exhibit D.....Plaintiff's Original Petition and Requests for Disclosure

Exhibit E .....Return of Citation with affidavit

Respectfully submitted,

/s/ Roger D. Oppenheim

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Mr. Jason Webster

**THE WEBSTER LAW FIRM**

6200 Savoy Drive, Ste. 150

Houston, TX 77036

[filing@thewebsterlawfirm.com](mailto:filing@thewebsterlawfirm.com)

/s/ Roger D. Oppenheim

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Roger D. Oppenheim

HCDistrictclerk.com

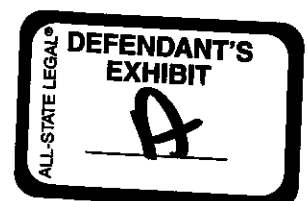
DAVIS, DELWIN II vs. FIRSTFLEET INC

6/29/2016

Cause: 201637282 CDI: 7 Court: 333

**DOCUMENTS**

Number	Document	Post Date Jdgm	Pgs
70791606	Citation-Firstfleet Inc.	06/22/2016	2
70551682	Civil Process Pick-Up Form	06/06/2016	1
70442897	Plaintiff's Original Petition and Request for Disclosure	06/03/2016	6
> 70442898	Civil Case Information Sheet	06/03/2016	2
> 70442899	Civil Process Request	06/03/2016	2



6/3/2016 4:41:49 PM  
 Chris Daniel - District Clerk  
 Harris County  
 Envelope No: 10973730  
 By: CUERO, NELSON  
 Filed: 6/3/2016 4:41:49 PM

# CIVIL PROCESS REQUEST 2016-37282 / Court: 333

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING  
 FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: \_\_\_\_\_ CURRENT COURT: \_\_\_\_\_

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): Plaintiff's Original Petition and Request for Disclosure

FILE DATE OF MOTION: 06/03/2016  
 Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: First Fleet, Inc.

ADDRESS: 2 North Jackson Street, Suite 605, Montgomery, Alabama 36104-3821

AGENT, (if applicable): CT Corporation System

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE  
☒ CIVIL PROCESS SERVER - Authorized Person to Pick-up: Court Record Research Phone: 713-227-3353  
☐ MAIL ☐ CERTIFIED MAIL  
☐ PUBLICATION:  
 Type of Publication: ☐ COURTHOUSE DOOR, or  
☐ NEWSPAPER OF YOUR CHOICE: \_\_\_\_\_  
☐ OTHER, explain \_\_\_\_\_

\*\*\*\*\*

\*\*\*\*

2. NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

AGENT, (if applicable): \_\_\_\_\_

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): \_\_\_\_\_

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE  
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: \_\_\_\_\_ Phone: \_\_\_\_\_  
☐ MAIL ☐ CERTIFIED MAIL  
☐ PUBLICATION:  
 Type of Publication: ☐ COURTHOUSE DOOR, or  
☐ NEWSPAPER OF YOUR CHOICE: \_\_\_\_\_  
☐ OTHER, explain \_\_\_\_\_

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: Jason C. Webster TEXAS BAR NO./ID NO. 24033318

MAILING ADDRESS: 6200 Savoy Drive, Suite 150, Houston, Texas 77036

PHONE NUMBER: 713 581-3900 FAX NUMBER: 713 581-3907  
 area code phone number area code fax number

EMAIL ADDRESS: filing@thewebsterlawfirm.com





SERVICE REQUESTS WHICH CANNOT BE PROCESSED BY THIS OFFICE WILL BE HELD FOR 30 DAYS PRIOR TO CANCELLATION. FEES WILL BE REFUNDED ONLY UPON REQUEST, OR AT THE DISPOSITION OF THE CASE. SERVICE REQUESTS MAY BE REINSTATED UPON APPROPRIATE ACTION BY THE PARTIES.

INSTRUMENTS TO BE SERVED:

(Fill In Instrument Sequence Number, i.e. 1st, 2nd, etc.)

ORIGINAL PETITION

\_\_\_\_\_ AMENDED PETITION

\_\_\_\_\_ SUPPLEMENTAL PETITION

COUNTERCLAIM

\_\_\_\_\_ AMENDED COUNTERCLAIM

\_\_\_\_\_ SUPPLEMENTAL COUNTERCLAIM

CROSS-ACTION:

\_\_\_\_\_ AMENDED CROSS-ACTION

\_\_\_\_\_ SUPPLEMENTAL CROSS-ACTION

THIRD-PARTY PETITION:

\_\_\_\_\_ AMENDED THIRD-PARTY PETITION

\_\_\_\_\_ SUPPLEMENTAL THIRD-PARTY PETITION

INTERVENTION:

\_\_\_\_\_ AMENDED INTERVENTION

\_\_\_\_\_ SUPPLEMENTAL INTERVENTION

INTERPLEADER

\_\_\_\_\_ AMENDED INTERPLEADER

\_\_\_\_\_ SUPPLEMENTAL INTERPLEADER

INJUNCTION

MOTION TO MODIFY

SHOW CAUSE ORDER

TEMPORARY RESTRAINING ORDER

BILL OF DISCOVERY:

ORDER TO: \_\_\_\_\_  
(specify)

MOTION TO: \_\_\_\_\_  
(specify)

PROCESS TYPES:

NON WRIT:

CITATION

ALIAS CITATION

PLURIES CITATION

SECRETARY OF STATE CITATION

COMMISSIONER OF INSURANCE

HIGHWAY COMMISSIONER

CITATION BY PUBLICATION

NOTICE

SHORT FORM NOTICE

PRECEPT (SHOW CAUSE)

RULE 106 SERVICE

SUBPOENA

WRITS:

ATTACHMENT (PROPERTY)

ATTACHMENT (WITNESS)

ATTACHMENT (PERSON)

CERTIORARI

EXECUTION

EXECUTION AND ORDER OF SALE

GARNISHMENT BEFORE JUDGMENT

GARNISHMENT AFTER JUDGMENT

HABEAS CORPUS

INJUNCTION

TEMPORARY RESTRAINING ORDER

PROTECTIVE ORDER (FAMILY CODE)

PROTECTIVE ORDER (CIVIL CODE)

POSSESSION (PERSON)

POSSESSION (PROPERTY)

SCIRE FACIAS

SEQUESTRATION

SUPERSEDEAS



**CHRIS DANIEL**  
HARRIS COUNTY DISTRICT CLERK

ENTERED \_\_\_\_\_  
VERIFIED hl

**Civil Process Pick-Up Form**

CAUSE NUMBER: 2016 37282

ATY \_\_\_\_\_

CIV ✓

COURT 333

**REQUESTING ATTORNEY/FIRM NOTIFICATION**

\*ATTORNEY: Jason Charles Webster PH: 713 581 3400

\*CIVIL PROCESS SERVER: Court Record Research #107

\*PHONE NUMBER: 713 227 3353

\*PERSON NOTIFIED SVC READY: Erin

\* NOTIFIED BY: Nelson Cuero

DATE: 6/6/16

Type of Service Document: CITEN

Tracking Number 73254364

Process papers prepared by: Nelson Cuero

Date: Monday, June 06, 2016 30 days waiting 07 - 06 - 16

\*Process papers released to: GABRIEL (CRL)  
(PRINT NAME)

7-717-3353  
\*(CONTACT NUMBER)

(SIGNATURE)

\*Process papers released by:

Shoniece Richardson  
(PRINT NAME)

Shoniece Richardson  
(SIGNATURE)

\* Date: 6-8-16, 2016 Time: 1:00 AM / PM

RECORDER'S MEMORANDUM  
This instrument is of poor quality  
at the time of imaging

## CIVIL CASE INFORMATION SHEET

6/3/2016 4:41:49 PM  
Chris Daniel - District Clerk  
Harris County  
Envelope No: 10973730  
By: CUERO, NELSON  
Filed: 6/3/2016 4:41:49 PM

CAUSE NUMBER (FOR CLERK USE ONLY):

COURT (FOR CLERK USE ONLY):

STYLED Delwin Davis, II vs. FirstFleet, Inc.

2016-37282 / Court: 333

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:	
Name:	Email:	Plaintiff(s)/Petitioner(s):		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
Jason C. Webster	filng@thewebsterlawfirm.com	Delwin Davis, II			
Address:	Telephone:	Defendant(s)/Respondent(s):		Additional Parties in Child Support Case:	
6200 Savoy Drive, Suite 150	(713) 581-3900	FirstFleet, Inc.		Custodial Parent:	
City/State/Zip:	Fax:			Non-Custodial Parent:	
Houston, Texas 77036	(713) 581-3907			Presumed Father:	
Signature:	State Bar No:				
/s/ Jason C. Webster	24033318				
[Attach additional page as necessary to list all parties]					
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
<b>Contract</b> <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: <b>Foreclosure</b> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	<b>Injury or Damage</b> <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <b>Malpractice</b> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input checked="" type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <b>Product Liability</b> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	<b>Real Property</b> <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	<b>Marriage Relationship</b> <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <b>Divorce</b> <input type="checkbox"/> With Children <input type="checkbox"/> No Children <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	<b>Post-judgment Actions (non-Title IV-D)</b> <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
<b>Employment</b> <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	<b>Other Civil</b> <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:				
<b>Tax</b> <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<b>Probate &amp; Mental Health</b> <b>Probate/Wills/Intestate Administration</b> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:				
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input checked="" type="checkbox"/> Over \$1,000,000					



## Instructions for Completing the Texas Civil Case Information Sheet

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. If the original petition, application or post-judgment petition or motion is e-filed, the case information sheet must not be the lead document.

This sheet, required by Rule 78a of the Texas Rules of Civil Procedure, is intended to collect information that will be used for statistical and administrative purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

The attorney or self-represented (*pro se*) plaintiff/petitioner filing the case or post-judgment petition or motion should complete the sheet as follows:

### 1. Contact information

**a) Contact information for person completing case information sheet.** Enter the following information:

- name;
- address;
- city, state, and zip code;
- email address;
- telephone number;
- fax number, if available;
- State Bar number, if the person is an attorney; and
- signature. (*NOTE: When a case information sheet is submitted electronically, the signature may be a scanned image or "/s/" and the name of the person completing the case information sheet typed in the space where the signature would otherwise appear.*)

**b) Names of parties in the case.** Enter the name(s) of the:

(*NOTE: If the name of a party to a case is confidential, enter the party's initials rather than the party's name.*)

- plaintiff(s) or petitioner(s);
- defendant(s) or respondent(s); and
- in child support cases, additional parties in the case, including the:
  - custodial parent;
  - non-custodial parent; and
  - presumed father.

Attach an additional page as necessary to list all parties.

**c) Person or entity completing sheet is.** Indicate whether the person completing the sheet, or the entity for which the sheet is being completed, is:

- an attorney for the plaintiff or petitioner;
- a *pro se* (self-represented) plaintiff or petitioner;
- the Title IV-D agency; or
- other (provide name of person or entity).

### 2. Case type.

Select the case category that best reflects the most important issue in the case. You must select only one.

### 3. Procedure or remedy.

If applicable, select any of the available procedures or remedies being sought in the case. You may select more than one.

### 4. Damages sought.

Select the damages being sought in the case:

(*NOTE: If the claim is governed by the Family Code, do not indicate the damages sought.*)

- only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest and attorney fees;
- monetary relief over \$100,000 or less and non-monetary relief;
- monetary relief over \$100,000 but not more than \$200,000;
- monetary relief over \$200,000 but less than \$1,000,000; or
- monetary relief over \$1,000,000.



3.1 Venue is proper and maintainable in Harris County, Texas under §15.002(a)(1) of the Texas Civil Practice & Remedies Code because all or a substantial part of the events or omissions giving rise to the claims made the basis of this lawsuit occurred in Harris County, Texas.

3.2 This Court has jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

3.3 Defendant transports products and services throughout the United States, including, but not limited to the State of Texas, knowing that they are engaging in interstate commerce and are subject to the laws of the states in which they are traveling.

3.4 Defendant, therefore, had a reasonable expectation that it would be haled into any Court within these United States in which they engaged in commerce, including a Court in the State of Texas, by reason of injecting its products and/or services into a stream of commerce, especially given that it owns/operates tractor-trailers which facilitates intrinsically interstate and international travel.

#### IV. FACTS

4.1 On or about January 20, 2015, at approximately 9:00 p.m., Plaintiff Delwin Davis, II, was headed southbound on Sugar Pine Drive to his home near the 16800 block. On the same stretch of Sugar Pine Drive, a tractor-trailer owned by Defendant, FirstFleet Inc., was parked in Plaintiff's driving lane. While parked, the tractor-trailer had no emergency lights, hazard lights, or any other lighting to bring awareness to any driver that a tractor-trailer was parked in a driving lane. Plaintiff swerved to the left in an attempt to avoid the collision but still struck the rear of the parked tractor-trailer, suffering serious injuries. At the time of the incident, there was no operator or driver inside the parked tractor-trailer.

4.2 Nothing that Plaintiff did or failed to do on the occasion in question caused or in any way contributed to his injuries. Due to the actions of the Defendant in this incident, at the time of the collision, there were little to no maneuvers that any driver in Plaintiff's position could have taken to avoid this collision.

4.3 The collision was proximately caused by the negligence and gross negligence of Defendant.

#### **V. NEGLIGENCE AGAINST FIRSTFLEET INC.**

5.1. On information and belief, the unknown driver of the parked tractor-trailer, was an agent and/or servant of Defendant, FirstFleet Inc. As such, Defendant, FirstFleet, Inc. is responsible for the conduct of the unknown driver due to the master-servant relationship which existed, and under the doctrine of Respondeat Superior. As such, Defendant FirstFleet, Inc. is responsible for the conduct of its driver among other acts and omissions of negligence which may be shown at the trial of this cause.

5.2. Additionally, and without waiving any of the foregoing, said Defendant, FirstFleet Inc. negligently entrusted the vehicle and duties and responsibilities to the driver, because it knew and/or had reason to know that he/she was not a safe and prudent driver. The negligence was a proximate cause of Plaintiff's injuries.

5.3. Each of these acts and omissions, singularly or in combination with others, constitute negligence which was the proximate cause of this incident and the injuries sustained by Plaintiff.

5.4. Plaintiff would show that nothing that Plaintiff did, or failed to do, in any way contributed to this accident.

#### **VI. PUNITIVE DAMAGES**

6.1 Plaintiff hereby incorporates by reference, as if fully set forth herein, all preceding paragraphs.

6.2 The acts and/or omissions of the Defendant, as set forth herein, were also such knowing and willful failures to abide by the traffic laws of the state of Texas as well as the Federal Motor Carrier Safety Regulations, they constitute malicious, willful, wanton, grossly negligent and/or



reckless conduct. Said acts and/or omissions proximately caused or contributed to Plaintiff's injuries as such give rise to, and warrant, the imposition by a jury of significant punitive damages in an amount to be determined by the jury of no more than \$10 million dollars against Defendant.

## **VII. DAMAGES**

7.1 Plaintiff seeks the following elements of damage, which exceed the minimum jurisdictional limits of this Court excluding interest and costs:

- a) Physical pain and mental anguish in the past;
- b) Physical pain and mental anguish that, in reasonable probability, Plaintiff will suffer in the future;
- c) Physical impairment sustained in the past;
- d) Physical impairment that, in reasonable probability, Plaintiff will suffer in the future;
- e) Medical care expenses incurred in the past;
- f) Medical care expenses that, in reasonable probability, Plaintiff will suffer in the future;
- g) Physical disfigurement in the past;
- h) Physical disfigurement that, in reasonable probability, Plaintiff will suffer in the future;
- i) Loss of earning capacity sustained in the past;
- j) Loss of earning capacity that, in reasonable probability, Plaintiff will suffer in the future;
- k) Pre-judgment and post-judgment interest; and,
- l) All other damages to which Plaintiff is justly entitled.

7.2 Plaintiff reserves the right to plead additional and more specific damages in the future as more facts become known. Plaintiff seeks both past and future damages. Damages far exceed the minimum jurisdictional limits of this Court. As such, Plaintiff affirmatively pleads that he



seek monetary relief over \$1,000,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys' fees; and a demand for all the other relief to which the parties deem themselves entitled.

#### **VIII. DAMAGES CONSIDERED SEPARATELY**

8.1 Plaintiff respectfully asserts his request that Plaintiff be allowed to have the elements of damages considered separately and individually for the purpose of determining the sum of money that will fairly and reasonably compensate Plaintiff for the injuries, losses and damages incurred, and to be incurred, and that each element of Plaintiff's damages be considered separately and individually, segregating the past and future losses, so that pre-judgment interest due Plaintiff may be computed.

#### **IX. RULE 193.7 NOTICE**

9.1 Pursuant to Rule 193.7, Texas Rules of Civil Procedure, Plaintiff intends to rely upon the authenticity of any document a Defendant produces in discovery.

#### **X. REQUESTS FOR DISCLOSURE**

10.1 Under Texas Rules of Civil Procedure 194, Plaintiff requests that Defendant disclose, within (50) days of service of the request, the information material described in Rule 194.2.

#### **XI. JURY DEMAND**

11.1 Plaintiff demands a trial by jury to resolve all fact issues in this case and has paid the appropriate fee.

#### **XII. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant be cited to appear and answer herein, and that upon final trial hereof, Plaintiff recovers from said Defendant, a sum within the jurisdictional limits of the Court, costs of Court, pre-judgment and post-judgment interest at the legal rate, and for any and all further relief, both general and special, legal and

equitable to which Plaintiff may be justly entitled.

Respectfully submitted,

**THE WEBSTER LAW FIRM**

**By: /s/ Jason C. Webster**

JASON C. WEBSTER

State Bar No. 24033318

HEIDI O. VICKNAIR

State Bar No. 24046557

OMAR R. CHAUDHARY

State Bar No. 24082807

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713.581.3900 (telephone)

713.581.3907 (facsimile)

[filing@thewebsterlawfirm.com](mailto:filing@thewebsterlawfirm.com)

**ATTORNEYS FOR PLAINTIFF**

06.148734

6/22/2016 2:57:20 PM  
 Chris Daniel - District Clerk Harris County  
 Envelope No. 11282379  
 By: Kenya Kossie  
 Filed: 6/22/2016 2:57:20 PM

CAUSE NO. 201637282

RECEIPT NO.

0.00

CIV

\*\*\*\*\*

TR # 73254364

PLAINTIFF: DAVIS, DELWIN II  
 vs.  
 DEFENDANT: FIRSTFLEET INC

In The 333rd  
 Judicial District Court  
 of Harris County, Texas  
 333RD DISTRICT COURT  
 Houston, TX

CITATION (NON-RESIDENT CORPORATE)

THE STATE OF TEXAS  
 County of Harris

TO: FIRSTFLEET INC (AN ALABAMA CORPORATION) BY SERVING THROUGH ITS  
 REGISTERED AGENT CT CORPORATION SYSTEM  
 2 NORTH JACKSON STREET SUITE 605 MONTGOMERY AL 36104 - 3821

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

This instrument was filed on the 3rd day of June, 2016, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 6th day of June, 2016, under my hand and seal of said Court.

Issued at request of:  
 WEBSTER, JASON CHARLES  
 6200 SAVOY, SUITE 515  
 HOUSTON, TX 77036  
 Tel: (713) 581-3900  
 Bar No.: 24033318



Chris Daniel

CHRIS DANIEL, District Clerk  
 Harris County, Texas  
 201 Caroline, Houston, Texas 77002  
 (P.O. Box 4651, Houston, Texas 77210)

Generated By: CUERO, NELSON 7MM//10401585

## OFFICER/AUTHORIZED PERSON RETURN

Received on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_ .M., and  
 executed the same in \_\_\_\_\_ County, Texas, on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at  
 \_\_\_\_\_ o'clock \_\_\_\_ .M., by summoning the \_\_\_\_\_,  
 by delivering to \_\_\_\_\_, in person \_\_\_\_\_  
 a corporation <  
 by leaving in the principal office during office hours  
 \_\_\_\_\_ of the said \_\_\_\_\_

a true copy of this notice, together with accompanying copy of

Serving \_\_\_\_\_ copy \_\_\_\_\_ \$

Affiant

**AFFIDAVIT  
 ATTACHED**

By \_\_\_\_\_

Deputy

On this day, \_\_\_\_\_, known to me to be the person whose  
 signature appears on the foregoing return, personally appeared. After being by me duly sworn,  
 he/she stated that this citation was executed by him/her in the exact manner recited on the  
 return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
 Notary Public



NO. 2016-37282

DELWIN DAVIS, II

VS.

FIRSTFLEET, INC.

§  
§  
§  
§  
§  
§

IN THE 333RD JUDICIAL DISTRICT COURT OF  
HARRIS COUNTY, TEXAS

**AFFIDAVIT OF SERVICE**

**BEFORE ME**, the undersigned authority, on this day \_\_\_\_\_ (server), personally appeared and stated under oath as follows:

1. My name is Anthony Mims (server). I am over the age of eighteen (18), I am not a party to this case, and have no interest in its outcome. I am in all ways competent to make this affidavit and this affidavit is based on personal knowledge. The facts stated herein are true and correct. My business address is:

105 County RD 100 Montevallo AL  
(SERVERS ADDRESS)

2. ON 6-10-2016 (DATE) AT 3:10 (P) M (TIME) PLAINTIFF'S ORIGINAL PETITION, REQUEST FOR DISCLOSURE, CITATION (NON-RESIDENT CORPORATE) came to hand for delivery to FIRSTFLEET INC (AN ALABAMA CORPORATION) BY SERVING THROUGH ITS REGISTERED AGENT CT CORPORATION SYSTEM.

3. ON 6-10-2016 (DATE) AT 2:10 (P) M (TIME) The above named documents were delivered to: FIRSTFLEET INC (AN ALABAMA CORPORATION) BY SERVING THROUGH ITS REGISTERED AGENT CT CORPORATION SYSTEM by delivering to:

Mary Ann Nichols (N  
AME AND TITLE) a person authorized to accept service @  
2 North Jackson St Suite 401 Montgomery AL  
DDRESS), by Corporate Service, in accordance to Rule 108 TRCP.

FURTHER AFFIANT SAYETH NOT.

Anthony Mims  
SERVER'S SIGNATURE

Anthony Mims  
SERVER'S PRINTED NAME

SWORN TO AND SUBSCRIBED before me by Anthony Mims (server) appeared on this 6-10-2016 day of June, 2016 to attest witness my hand and seal of office.

Scott G Hadly  
NOTARY PUBLIC IN AND  
FOR THE STATE OF Alabama  
2015.06.148734

NOTARY PUBLIC  
SCOTT G HADLY  
ALABAMA, STATE AT LARGE  
My Commission Expires May 16, 2018

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**DELWIN DAVIS, II**

**V.**

**FIRSTFLEET, INC.**

§  
§  
§  
§  
§

**CIVIL ACTION NO. 4:16-cv-1946**

**JURY REQUESTED**

**LIST OF PARTIES, COUNSEL OF RECORD AND STATUS**

**PLAINTIFF:**

Delwin Davis, II

**DEFENDANT:**

FirstFleet, Inc.

**ATTORNEYS:**

**ATTORNEY FOR PLAINTIFF:**

Jason Webster

SBN: 24033318

FBN:

**THE WEBSTER LAW FIRM**

6200 Savoy Drive, Ste. 150

Houston, TX 77036

713/581-3900

713/581-3907 (fax)

[filing@thewebsterlawfirm.com](mailto:filing@thewebsterlawfirm.com)

**ATTORNEY FOR DEFENDANT**

Roger D. Oppenheim

SBN: 15293400

FBN: 14205

**LORANCE & THOMPSON, PC**

2900 North Loop West, Ste. 500

Houston, TX 77092

713/868-5560

713/864-4671 (fax)

[rdo@lorancethompson.com](mailto:rdo@lorancethompson.com)

**STATUS OF REMOVED CASE:**

June 3, 2016

Plaintiff's Original Petition and Requests for Disclosure

July 1, 2016

Defendant's Notice of Removal

Defendant, FirstFleet, Inc., has been served with the Plaintiff's Original Petition. Defendant has not filed responses to written discovery. No depositions have been taken. The matter has not been mediated. The case has no trial setting or other court ordered deadlines.

Respectfully submitted,

/s/ Roger D. Oppenheim

\_\_\_\_\_  
Roger D. Oppenheim

FBN: 14206

SBN: 15292400

OF COUNSEL:

**LORANCE & THOMPSON, P.C.**

2900 North Loop West, Suite 500

Houston, TX 77092

713/868-5560

713/864-4671 (fax)

[rdo@lorancethompson.com](mailto:rdo@lorancethompson.com)

ATTORNEY FOR DEFENDANT

FIRSTFLEET, INC.

**CERTIFICATE OF SERVICE**

On this 1<sup>st</sup> day of July, 2016, a true and correct copy of the foregoing instrument has been provided to all parties by e-filing and/or telefax transmission.

Mr. Jason Webster

**THE WEBSTER LAW FIRM**

6200 Savoy Drive, Ste. 150

Houston, TX 77036

[filing@thewebsterlawfirm.com](mailto:filing@thewebsterlawfirm.com)

/s/ Roger D. Oppenheim

\_\_\_\_\_  
Roger D. Oppenheim